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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID MONROE TURNER,

Defendant and Appellant.

B194338

(Los Angeles County
Super. Ct. No. GA047433)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Janice C. Croft, Judge. Affirmed.

Larry Pizarro, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

David Monroe Turner appeals from an order revoking his probation and a judgment executing his previously suspended sentence.

On November 9, 2001, Turner was charged by information with one count of selling cocaine base in violation of Health and Safety Code section 11352, subdivision (a). The information further alleged that Turner had suffered two prior convictions for selling narcotics within the meaning of Health and Safety Code section 11370.2, subdivision (a) (enhanced punishment), and Penal Code section 1203.073, subdivision (b)(6) (ineligibility for probation or suspension of sentence), and that Turner had served three separate prison terms for felonies within the meaning of Penal Code section 667.5, subdivision (b).

On January 16, 2002, Turner waived his constitutional rights and entered a negotiated plea of no contest to selling cocaine base in violation of Health and Safety Code section 11352, subdivision (a), and admitted he had suffered a prior conviction for selling narcotics within the meaning of Health and Safety Code section 11370.2, subdivision (a). Pursuant to the plea agreement, Turner was sentenced to an aggregate state prison term of six years, consisting of the three-year lower term for selling cocaine base, plus a three-year enhancement for the prior narcotics conviction. The trial court suspended execution of sentence and placed Turner on three years of formal probation, on condition he complete a six-month residential treatment program. Turner was awarded 201 days of presentence credit (135 actual days and 66 days of conduct credit). The trial court also imposed a \$200 restitution fine (Pen. Code, § 1202.4, subd. (b)), a \$20 court security fee (Pen. Code § 1465.8, subd. (a)(1)) and a \$50 lab fee (Health & Saf. Code, § 11372.5, subd. (a)) plus \$85 in penalty assessments (Pen. Code, § 1464, Gov. Code, § 76000)¹. The remaining special allegations were dismissed on the People's motion.

On December 9, 2002, the trial court revoked and reinstated probation with the same terms and conditions after finding Turner had violated probation by repeatedly

¹ There is no reporter's transcript of the January 16, 2002 hearing.

failing to report to his probation officer and testing positive for cocaine. Turner was ordered to participate in an outpatient drug treatment program. On April 7, 2003, the trial court summarily revoked probation and issued a bench warrant after Turner failed to appear for a probation violation hearing. On April 4, 2003, the court remanded Turner into custody. On May 7, 2003, Turner admitted he had violated probation by “failing to return to court.” The court reinstated Turner’s probation and extended it two years, to January 15, 2007, on condition he enter a one-year residential treatment program.

On October 15, 2003, the trial court summarily revoked probation and issued a bench warrant after Turner failed to appear for a probation violation hearing. Turner was arrested on the bench warrant and appeared in court on January 12, 2004. A probation violation hearing was set for January 29, 2004. On that date, Turner admitted he had violated his probation. The court reinstated Turner’s probation, extended it to May 19, 2007, and ordered him into a residential treatment program. On August 24, 2004, Turner provided the court with proof of his completion of a six-month residential treatment program.

On September 28, 2004, Turner appeared in court for a progress report. The court ordered him to appear on November 3, 2004 for a further progress report and to provide proof of his continued attendance at Narcotics Anonymous meetings. On that date, Turner failed to appear. The court read and considered the probation officer’s report that Turner had failed to report to his probation officer and for narcotics testing. The court determined Turner had failed to appear without sufficient excuse, summarily revoked his probation, and issued a bench warrant.

Turner was arrested on June 1, 2006 for possession of cocaine base for sale (Health & Saf. Code, § 11351.5) and appeared in court June 16, 2006. The bench warrant was recalled and Turner was remanded into custody. On October 4, 2006 the trial court found Turner in violation of his probation “based on his failure to appear as ordered” on November 3, 2004 and “his conduct while on probation.” The trial court refused to reinstate probation and ordered executed the previously suspended six-year state prison sentence. Turner was awarded 637 days of presentence credit (483 actual

days, and 154 days of conduct credit). The trial court also imposed a \$200 restitution fine (Pen. Code, § 1202.4, subd. (b)), and a \$20 court security fee (Pen. Code § 1465.8, subd. (a)(1)). The trial court imposed and suspended a \$200 parole revocation fine. (Pen. Code, § 1202.45.) Turner filed a timely appeal but did not obtain a certificate of probable cause.

We appointed counsel to represent Turner on appeal. After examination of the record, counsel filed an “Opening Brief” in which no issues were raised. On April 11, 2007, we advised Turner he had 30 days within which to personally submit any contentions or issues he wished us to consider. No response has been received to date.

We have examined the entire record and are satisfied Turner’s attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113; *People v. Wende* (1979) 25 Cal.3d 436, 441.) However, because Turner pleaded no contest and failed to obtain a certificate of probable cause, his notice of appeal is not operative to challenge the judgment. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1096, 1099; *People v. Panizzon* (1996) 13 Cal.4th 68, 79.) As for the order revoking probation, substantial evidence supports the court’s finding Turner failed to appear in court as ordered and violated the terms of his probation. (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848-849.)

The judgment is affirmed.

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ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.